

September 5, 2019

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 17-287 – Bridging the Digital Divide for Low-Income Consumers
WC Docket No. 11-42 – Lifeline and Link Up Reform and Modernization
WC Docket No. 09-197 – Telecommunications Carriers Eligible for Universal Service Support
EX PARTE PRESENTATION

Dear Ms. Dortch:

By this letter, TracFone Wireless, Inc. (“TracFone”) brings to the Commission’s attention certain concerns regarding the manner with which the Universal Service Administrative Company (“USAC”) plans to implement the Lifeline Representative Accountability Database (“RAD”). Contained herein are specific recommendations which should be incorporated in the RAD prior to its implementation. TracFone supports a RAD as a reasonable and appropriate means for holding persons engaged in solicitation of Lifeline enrollees responsible for their conduct and for preventing waste, fraud and abuse in the critically-important Lifeline program. Implementation of the proposals set forth in this letter will enable the RAD to achieve its objective while avoiding unintended consequences which would cause unnecessary harm and disruption to Lifeline.

As a preliminary matter, establishment and implementation of the RAD is premature. In the notice of rulemaking portion of its 2017 Lifeline Order, the Commission proposed a rule which would require Lifeline provider representatives who participate in Lifeline enrollment to register with USAC.¹ In addition, the Commission proposed a rule which would prohibit incentive-based compensation (*i.e.*, commission payments) to agents involved in enrolling subscribers in Lifeline.² To date, neither the proposed agent commission prohibition rule nor the agent registration rule has been adopted. Whether, and in what form, either rule will be promulgated is uncertain.³

¹ Bridging the Digital Divide for Low-Income Consumers, et al (Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry), 32 FCC Rcd 10475 (2017) (“2017 Lifeline Order”).

² *Id.*, at ¶ 91.

³ Lifeline is aware of recent press reports which have indicated that the Commission may soon consider a Lifeline order which would include rules governing incentive-based agent compensation and agent registration.

It appears that USAC has proceeded with development and implementation of the RAD based solely on directions from Chairman Pai contained in a July 2017 letter to USAC.⁴ Although TracFone commends Chairman Pai for his suggestions, including the representative registration proposal, a letter to USAC from the Chairman does not constitute promulgation of a rule. Substantive agency rules, including rules governing the Lifeline program, must be promulgated in conformance with the procedural requirements of the Administrative Procedure Act.⁵

1. Agents Should be Prohibited from Representing More than One Lifeline Provider

Mandatory agent registration itself will be insufficient to prevent agent fraud. Currently, there is no prohibition against agents engaged in Lifeline enrollment soliciting customers for multiple providers – and some agents do so. So long as that is the case, and so long as agents are compensated based on enrollments, such agents are incentivized to solicit customers for one provider, and then attempt to receive additional compensation by “moving” those customers to other Lifeline providers. One way to prevent such agent moving of customers from one provider to another would be to allow providers to “freeze” their customer bases for specified periods of time. However, the Commission has determined to prohibit such “port freezes” on the basis that they deny Lifeline consumers the ability to exercise choice of providers.⁶ TracFone is not asking the Commission to revisit its decision to prohibit port freezes. It is asking the Commission to establish a rule which would prohibit Lifeline enrollment agents from representing more than one Lifeline provider.

Such a rule could be implemented in conjunction with the RAD. Agents would be required to register with USAC as representing one – and only one – Lifeline provider. Once an agent was registered with USAC as representing a provider, subsequent attempts by that agent to register on behalf of another provider would be rejected by USAC. If such a rule is not sufficient to prevent agents from representing multiple providers, TracFone would encourage the Commission to go further: repeated attempts to register with multiple providers would be grounds for mandatory debarment of that agent from soliciting Lifeline customers for any provider.

2. All Agents who are Compensated based on Lifeline Enrollments – Including so-called “Back Office” Agents – Should be required to Register with USAC

Although the Commission’s rulemaking notice was not specific, USAC has sought to require all persons involved in making Lifeline eligibility determinations to register and to provide certain personal identifying information as part of the RAD registration process. As Sprint and others have noted, requiring persons engaged in eligibility verification to register with the RAD

⁴ Letter from Chairman Ajit Pai to Ms. Vickie Robinson, Acting Chief Executive Officer and General Counsel, USAC, dated July 11, 2017, at 4.

⁵ 5 U.S.C. § 551 *et seq.* The rulemaking requirements are codified at 5 U.S.C. § 553.

⁶ 2017 Lifeline Order, at §§ 33-40.

can be problematic since much current eligibility verification is performed at offshore locations.⁷ TracFone also uses persons located offshore to conduct Lifeline eligibility verifications. Such offshore personnel typically do not have Social Security numbers or certificates of naturalization and often do not have email addresses. Whether or not such “back office” personnel should be required to register should not depend on whether they are direct employees of the Lifeline provider or are employed indirectly through an agency. Rather, the registration requirement should depend on whether or not the personnel involved in making the eligibility determinations (wherever they are located) are compensated based on the number of successful eligibility verifications (incentive-based compensation). As with Lifeline enrollment personnel, anyone whose compensation is based on the number of successful enrollments has an incentive to maximize earnings by enrolling – or verifying – more Lifeline subscribers. In TracFone’s view, anyone with such incentives – whether company employees or outside agents, and wherever they are located -- whether domestically or at offshore venues – should be required to register. No TracFone personnel or agents involved in the eligibility verification process are compensated based on successful enrollments

3. RAD Registration of Lifeline Enrollment Agents Should be Required for Agents Operating in All States, Whether or not the National Verifier has been Launched in a State.

All agents receiving incentive-based compensation for enrolling customers in any provider’s Lifeline program should be required to register with the RAD. In this regard, enrollment agents are different from “back office” (eligibility verification) agents. Agents involved in soliciting customers for Lifeline enrollment have economic incentives to find ways to maximize enrollments. TracFone has uncovered situations where unscrupulous agents have devised ways to falsify information and to evade state-administered database checks. Even the National Verifier may not be fully able to detect and prevent such schemes. For that reason, it is imperative that agents be held accountable and that they should be required to register with USAC. Agents engaged in Lifeline enrollment who have been determined to have violated Commission rules should be subject to Commission sanctions, including debarment, and including monetary forfeitures subject to the conditions contained at Section 503(b)(5) of the Communications Act (47 U.S.C. § 503(b)(5)).⁸

⁷ Letter to Secretary Dortch from Norina T. Moy, Director, Government Affairs, Sprint, dated August 14, 2019.

⁸ This is a short-term problem as the National Verifier, when fully implemented, will completely remove Lifeline providers from the eligibility verification process, except for those states (Texas and California) which have opted out. TracFone recommends that the Commission work with USAC and those states to ensure that those states’ practices governing eligibility verification determinations are as robust as those in the National Verifier states.

4. USAC Should Allow for Real Time Uploading of Agent Identification Information

During a recent USAC webinar, it was announced that Lifeline agents seeking to register with RAD who were unable to verify their identity would be required to submit their proof of identity documentation via U.S. mail. USAC further announced that it would take two weeks to process such identity documentation once received. This will result in prolonged and wholly unnecessary delays in completing the RAD registration process for many agents. There is no reason why USAC cannot and should not allow agents seeking to register to submit “soft” copies of their identifying information electronically. TracFone requests that the Commission direct USAC to accept such soft copies of agent personal identifying information.

For the reasons set forth in this letter, TracFone respectfully urges the Commission to promulgate rules governing Lifeline agent registration and compensation in conformance with the reviews expressed herein. Pursuant to Section 1.1206 of the Commission’s rules, this letter is being filed electronically in each of the above-captioned dockets. Please direct any questions regarding this letter to undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

cc: Mr. Trent Harkrader
Ms. Jodie Griffin
Ms. Michelle Garber